Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 16, 1996

Ms. Joanna L. Harkey
Associate General Counsel
Texas Tech University Health Sciences Center
3601 4th Street
Lubbock, Texas 79430-0001

OR96-0035

Dear Ms. Harkey:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31705.

Texas Tech University Health Sciences Center (the "university") has received an open records request for a variety of personnel documents for employees at the center. You only object to the release of annual performance evaluations, exit interviews that are not part of an employee's personnel file, and "the name of the person(s) who Dr. Carter refers to as considering [the requestor] incompetent." We assume that you have already made the remaining information available to the requestor. You claim that the performance evaluations and exit interviews are excepted from required public disclosure by section 552.102 of the Government Code.

Section 552.102 excepts personnel file information from required public disclosure if its release would cause a "clearly unwarranted invasion of personal privacy." *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), however, establishes that such an invasion occurs only if the release of personnel file information would cause an invasion of privacy under the standards of *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). Information must be withheld on the basis of common-law privacy if it is highly intimate or embarrassing such that a reasonable person would object to its release and the public has no legitimate interest in it. *Id.* at 685. "The fact that a public employee receives a less than perfect -- or even a very bad -- evaluation is not the type of information protected by common-law privacy; it is not a highly intimate or

embarrassing fact about the employee's personal affairs." Open Records Decision No. 473 (1987) at 3. Moreover, the public has a legitimate interest in the job performance of public employees. *See, e.g.*, Open Records Decision No. 441 (1986). The information in these evaluations is neither intimate nor embarrassing, and the public has a legitimate interest in it. You must, therefore, release the performance evaluations.

The exit interview that you sent for our review is similarly open. The document contains no intimate or embarrassing information that would allow its closure under section 552.102. Although you claim that the university has a policy of keeping these records confidential, a governmental body may not, by rule, contract, or promise, close access to records that it holds. Open Records Decision No. 527 (1989) at 6.

Finally, you contend that the university is not required to respond to the question asked in the third request under consideration here. We agree. You need not search out the name of the person to whom Dr. Carter refers as considering the requestor incompetent. The Open Records Act does not require a governmental body to answer factual questions. Open Records Decision No. 379 (1983) at 4; *see also* Open Records Decision No. 347 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and is not a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

Karen Hattaway

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 31705

Enclosures: Submitted documents

cc: Ms. Gay Lynn Smith, Managing Editor
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